

**ASSEMBLY BILL**

**No. 738**

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**Introduced by Assembly Member Hagman**

February 17, 2011

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An act to add Sections 22119.6 and 22603 to the Education Code, and to amend Sections 9355.4, 9355.41, 20322, 31553, and 31641 of, and to add Sections 7514.51, 9355.42, 20302, 20890.5, 31553.5, 31641.5, 45310.2, and 50805.5 to, the Government Code, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 738, as introduced, Hagman. Public employees' retirement: elected officials.

Existing law authorizes the creation of retirement systems for public employees by counties, cities, and districts. Existing law creates the Public Employees' Retirement System and the State Teachers Retirement System, which provide a defined benefit to their members based on age at retirement, service credit, and final compensation. Existing law establishes the criteria for membership in the various public employee retirement systems and may exclude certain employment classifications from membership. Existing law prohibits Members of the Legislature elected on or after November 1, 1990, from accruing any retirement or pension benefit, provided that other elective officers provided for by the California Constitution may elect to become members of Legislators' Retirement System. The California Constitution provides for the division of the state into counties and requires that a county have an elected sheriff, elected district attorney, elected assessor, and elected governing body. Existing law provides for the incorporation of cities in various forms and requires that certain city offices be filled

pursuant to elections, as prescribed. Existing law provides for the creation of districts, the governing bodies of which may be elected.

This bill would prohibit a person who is publicly elected to an office of any kind, on and after January 1, 2012, from becoming a member of a retirement system by virtue of that service or acquiring any retirement right or benefit for serving in that elective office. The bill would also apply these prohibitions to a person who is appointed to fill the term of a person so elected. The bill would except from this prohibition a person who obtained membership by virtue of holding an elective public office prior to January 1, 2012, and remains in that office or is reelected to it.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 22119.6 is added to the Education Code,  
2     to read:

3     22119.6. Notwithstanding any other law, “creditable service”  
4     does not include service by a person described in Section 22603  
5     performed in an elective office.

6     SEC. 2. Section 22603 is added to the Education Code, to read:

7     22603. (a) Notwithstanding any other law, a person who is  
8     publicly elected to an office of any kind, on and after January 1,  
9     2012, shall not become a member of a retirement system  
10    established under this chapter by virtue of that service and shall  
11    not acquire any retirement right or benefit for serving in that  
12    elective office. This section shall apply equally to a person who  
13    is appointed to fill the term of a person so elected.

14    (b) This section shall not apply to a person who obtained  
15    membership by virtue of holding an elective public office prior to  
16    January 1, 2012, for so long as he or she holds that office or is  
17    reelected to that office.

18    SEC. 3. Section 7514.51 is added to the Government Code, to  
19    read:

20    7514.51. (a) Notwithstanding any other law and except as  
21    required or permitted by the California Constitution, a person who  
22    is publicly elected to an office of any kind, on and after January  
23    1, 2012, shall not become a member of any retirement system by  
24    virtue of that service and shall not acquire any retirement right or  
25    benefit for serving in that elective office. This section shall apply

1 equally to a person who is appointed to fill the term of a person  
2 so elected.

3 (b) This section shall not apply to a person who obtained  
4 membership by virtue of holding an elective public office prior to  
5 January 1, 2012, for so long as he or she holds that office or is  
6 reelected to that office.

7 SEC. 4. Section 9355.4 of the Government Code is amended  
8 to read:

9 9355.4. ~~Every~~ *Except as provided in Section 9355.42, every*  
10 elective officer of the state whose office is provided for by the  
11 California Constitution, except judges, may become a member of  
12 this system. Except for judges, every elective officer in office at  
13 the time this section becomes effective may, within 90 days after  
14 the effective date, file with the board a written election to become  
15 a member of this system. Except for judges, every elective officer  
16 elected after the effective date of this section may file an election  
17 within 90 days after the commencement of the first term of office  
18 for which he or she is elected. Upon the filing of the election he  
19 or she becomes a member of this system on the first day of the  
20 month following the filing of the election.

21 SEC. 5. Section 9355.41 of the Government Code is amended  
22 to read:

23 9355.41. ~~The~~ *Except as provided in Section 9355.42, the*  
24 Insurance Commissioner may become a member of this system as  
25 provided in this section. An Insurance Commissioner who is elected  
26 after January 1, 1994, may file an election within 90 days after the  
27 commencement of the term of office for which he or she is elected.  
28 Upon the filing of the election he or she becomes a member of this  
29 system on the first day of the month following the filing of the  
30 election.

31 SEC. 6. Section 9355.42 is added to the Government Code, to  
32 read:

33 9355.42. (a) Notwithstanding any other law, a person who is  
34 publicly elected to an office of any kind, on and after January 1,  
35 2012, shall not become a member of the system by virtue of that  
36 service and shall not acquire any retirement right or benefit for  
37 serving in that elective office. This section shall apply equally to  
38 a person who is appointed to fill the term of a person so elected.

39 (b) This section shall not apply to a person who obtained  
40 membership by virtue of holding an elective public office prior to

1 January 1, 2012, for so long as he or she holds that office or is  
2 reelected to that office.

3 SEC. 7. Section 20302 is added to the Government Code, to  
4 read:

5 20302. (a) Notwithstanding any other law, a person who is  
6 publicly elected to an office of any kind, on and after January 1,  
7 2012, shall not become a member of the system by virtue of that  
8 service and shall not acquire any retirement right or benefit for  
9 serving in that elective office. This section shall apply equally to  
10 a person who is appointed to fill the term of a person so elected.

11 (b) This section shall not apply to a person who obtained  
12 membership by virtue of holding an elective public office prior to  
13 January 1, 2012, for so long as he or she holds that office or is  
14 reelected to that office.

15 SEC. 8. Section 20322 of the Government Code is amended  
16 to read:

17 20322. ~~(a)~~ *Except as otherwise provided in Section 20302:*

18 (a) An elective officer is excluded from membership in this  
19 system unless the officer files with the board an election in writing  
20 to become a member. Upon electing to become a member, the  
21 officer may further elect at any time prior to retirement to receive  
22 service credit for his or her prior, excluded service by making the  
23 contributions as specified in Sections 21050 and 21051.

24 (b) As used in this part, "elective officer" includes any officer  
25 of the Senate or Assembly who is elected by vote of the members  
26 of either or both of the houses of the Legislature, and any  
27 appointive officer of a city or county occupying a fixed term of  
28 office, as well as officers of the state or contracting agencies elected  
29 by the people, and persons elected to a city council or a county  
30 board of supervisors.

31 (c) Notwithstanding any other provision of subdivision (a) or  
32 (b), elected or appointed officers of a county superintendent of  
33 schools, school district, or community college district, or of a  
34 contracting agency, who serve on public commissions, boards,  
35 councils, or similar legislative or administrative bodies are  
36 excluded from membership in this system. This exclusion shall  
37 only apply to those elected or appointed officers, other than city  
38 or county officers, who are first elected or appointed to an office  
39 on or after July 1, 1994, or who are elected or appointed to a term  
40 of office not consecutive with the term of office held on June 30,

1 1994. For city or county elected or appointed officers, this  
2 exclusion shall only apply to those officers who are first elected  
3 or appointed to an office on or after January 1, 1997, or who are  
4 elected or appointed to a term of office not consecutive with the  
5 term of office held on December 31, 1996. This exclusion shall  
6 not apply to persons elected to a city council or county board of  
7 supervisors.

8 (d) Any person holding the office of city attorney or the office  
9 of assistant city attorney, whether employed, appointed, or elected,  
10 is excluded from the definition of “elective officer” as defined in  
11 subdivision (b). This subdivision shall apply only to persons first  
12 employed, elected, or appointed on or after July 1, 1994, or  
13 following any break in state service while serving in the office if  
14 the office was held on June 30, 1994.

15 (e) In accordance with Section 20125, the board shall be the  
16 sole judge of which elected or appointed positions qualify the  
17 incumbent as an “elective officer” in this system under this section.

18 (f) Notwithstanding any other provision of law, with respect to  
19 elective officers of contracting agencies, payment by a contracting  
20 agency of employer contributions and any other amounts for  
21 employer paid benefits under this system shall not be construed  
22 as receipt of salary or compensation by the elective officer for  
23 purposes of any statutory salary or compensation limitation.

24 SEC. 9. Section 20890.5 is added to the Government Code, to  
25 read:

26 20890.5. Notwithstanding any other law, a person described  
27 in Section 20302 shall not be credited with service by virtue of  
28 serving in an elective office.

29 SEC. 10. Section 31553 of the Government Code is amended  
30 to read:

31 31553. ~~Elective~~ *Except as provided in Section 31553.5, elective*  
32 *officers become members of the retirement association on the first*  
33 *day of the calendar month following the filing of a declaration*  
34 *with the board to become a member, provided, however, that any*  
35 *such elective officer may, within 60 days after the expiration of*  
36 *the officer’s term of office or within 60 days after the officer ceases*  
37 *to hold the office, rescind the declaration and withdraw from the*  
38 *retirement association. In such cases, all contributions paid by the*  
39 *member shall be refunded in the same manner as applicable to*  
40 *members terminating service.*

1 SEC. 11. Section 31553.5 is added to the Government Code,  
2 to read:

3 31553.5. (a) Notwithstanding any other law, a person who is  
4 publicly elected to an office of any kind, on and after January 1,  
5 2012, shall not become a member of a retirement system  
6 established under this chapter by virtue of that service and shall  
7 not acquire any retirement right or benefit for serving in that  
8 elective office. This section shall apply equally to a person who  
9 is appointed to fill the term of a person so elected.

10 (b) This section shall not apply to a person who obtained  
11 membership by virtue of holding an elective public office prior to  
12 January 1, 2012, for so long as he or she holds that office or is  
13 reelected to that office.

14 SEC. 12. Section 31641 of the Government Code is amended  
15 to read:

16 31641. ~~“Service”~~ *Except as provided in Section 31641.5,*  
17 *“service”* means uninterrupted employment of any person  
18 appointed or elected for that period of time:

19 (a) For which deductions are made from his earnable  
20 compensation from the county or district for such service while  
21 he is a member of the retirement association.

22 (b) In military service for which the county or district or member  
23 is authorized by other provisions of this chapter to make, and does  
24 make, contributions.

25 (c) For which he receives credit for county service or for public  
26 service or for both pursuant to the provisions of this article.

27 (d) Allowed for prior service.

28 SEC. 13. Section 31641.5 is added to the Government Code,  
29 to read:

30 31641.5. Notwithstanding any other law, a person described  
31 in Section 31553.5 shall not be credited with service by virtue of  
32 serving in an elective office.

33 SEC. 14. Section 45310.2 is added to the Government Code,  
34 to read:

35 45310.2. (a) Notwithstanding any other law, a person who is  
36 publicly elected to an office of any kind, on and after January 1,  
37 2012, shall not become a member of a retirement system  
38 established under this chapter by virtue of that service and shall  
39 not acquire any retirement right or benefit for serving in that

1 elective office. This section shall apply equally to a person who  
2 is appointed to fill the term of a person so elected.

3 (b) This section shall not apply to a person who obtained  
4 membership by virtue of holding an elective public office prior to  
5 January 1, 2012, for so long as he or she holds that office or is  
6 reelected to that office.

7 SEC. 15. Section 50805.5 is added to the Government Code,  
8 to read:

9 50805.5. (a) Notwithstanding any other law, a person who is  
10 publicly elected to an office of any kind, on and after January 1,  
11 2012, shall not become a member of a retirement system  
12 established under this chapter by virtue of that service and shall  
13 not acquire any retirement right or benefit for serving in that  
14 elective office. This section shall apply equally to a person who  
15 is appointed to fill the term of a person so elected.

16 (b) This section shall not apply to a person who obtained  
17 membership by virtue of holding an elective public office prior to  
18 January 1, 2012, for so long as he or she holds that office or is  
19 reelected to that office.

20 SEC. 16. The provisions of this act are severable. If any  
21 provision of this act or its application is held invalid, that invalidity  
22 shall not affect other provisions or applications that can be given  
23 effect without the invalid provision or application.